

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

RONALD RAY HORNER,

Defendant/Movant.

CR 16-40-GF-BMM
CV 18-52-GF-BMM

ORDER

This case comes before the Court on Defendant/Movant Ronald Ray Horner's motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. Horner is a federal prisoner proceeding pro se.

Counsel for Horner filed a notice of appeal on November 30, 2017. Horner's appeal remains pending in the Court of Appeals. *See* Notice (Doc. 93); Order (Doc. 96).

A § 2255 motion is the equivalent of a petition for writ of habeas corpus. *E.g., United States v. Hayman*, 342 U.S. 205, 210-19 (1952). "Habeas review is an extraordinary remedy and will not be allowed to do service for an appeal." *Bousley v. United States*, 523 U.S. 614, 621 (1998) (quoting *Reed v. Farley*, 512

U.S. 339, 354 (1994), and *Sunal v. Large*, 332 U.S. 174, 178 (1947)).

Consequently, district courts may not consider § 2255 motions before a conviction becomes final. *See, e.g., United States v. Pirro*, 104 F.3d 297, 299-300 (9th Cir. 1997); Rule 5, Rules Governing § 2255 Proceedings for the United States District Courts, advisory committee's note (quoting *Womack v. United States*, 395 F.2d 630, 631 (D.C. Cir. 1968)).

Horner's conviction will be final at the conclusion of all proceedings on appeal, including any petition for writ of *certiorari* to the United States Supreme Court. *See Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987). When it is the appropriate time to file a § 2255 motion, Horner must assert in one motion all claims for relief he wishes the Court to consider. *See generally* 28 U.S.C. §§ 2255(h), 2244(b).

This law is well-settled. A certificate of appealability is not warranted. *See Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Horner's § 2255 motion (Doc. 102) is DISMISSED as premature. No action will be taken on it.
2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Horner files a Notice of Appeal of this Order.

3. The Clerk of Court shall ensure that all pending motions in this case and in CV 18-52-GF-BMM are terminated and shall close the civil file by entering a judgment of dismissal.

DATED this 13th day of March, 2018.



Brian Morris
United States District Court Judge